

**BEFORE THE
U.S. DEPARTMENT OF ENERGY
Washington, DC 20585**

In the Matter of:

Westinghouse Lighting Corporation

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Case Number: 2010-CE-09/1001

NOTICE OF NONCOMPLIANCE DETERMINATION

General Service Fluorescent Lamp

On July 22, 2010, Westinghouse Lighting Corporation (Westinghouse) notified DOE that a general service fluorescent lamp, model F40T12/CWE (Westinghouse product code 07521000), does not comply with the applicable energy conservation standards.

In its filing, Westinghouse also informed DOE that, in accordance with 10 CFR § 430.71, Westinghouse had:

- (1) Ceased distribution in commerce of all units of product 07521000;
- (2) Provided written notification of this noncompliance determination to all persons to whom Westinghouse has distributed units of product 07521000; and
- (3) Provided to DOE a report on the sales of product 07521000.

Based on the information supplied by Westinghouse, the model identified by Westinghouse Product Code 07521000 does not meet the applicable DOE energy conservation standards. Westinghouse notified DOE of this noncompliance and has taken most of the mandatory actions required by 10 CFR § 430.71. Westinghouse must provide to DOE information regarding any units of the noncompliant products that remain in the U.S.

Because Westinghouse provided DOE with a satisfactory statement detailing the steps that Westinghouse took to ensure that the noncompliant model will no longer be distributed in commerce, DOE elects to defer seeking a judicial order to restrain further distribution of these models such an order until a more appropriate time, if needed.

Medium Base Compact Fluorescent Lamp

On June 30, 2010, Westinghouse provided to DOE a compliance statement for medium base compact fluorescent lamps. In its report, Westinghouse certified that the medium base compact

fluorescent lamp model 15GLOBE/65/2 (Westinghouse product code 3800400) does not meet the applicable energy conservation standard. DOE issued a request for test data on August 19, 2010. In subsequent communication, Westinghouse admitted that the test results show that the product does not meet the applicable energy conservation standard, although Westinghouse has not provided the test reports to DOE. In addition, Westinghouse admitted that the testing conducted was not performed in accordance with DOE regulations. DOE notes that Westinghouse indicated that it ceased distribution of this model effective September 2, 2010, and is considering performing additional testing as outlined below.

FINDINGS

Based on the available test data, DOE has determined that the model identified by Westinghouse product code 3800400 does not meet the applicable DOE energy conservation standards.

MANDATORY ACTIONS BY WESTINGHOUSE

In light of the above findings, Westinghouse must take the following steps in accordance with 10 CFR § 430.71:

- (1) Immediately cease distribution in commerce of all units of the basic model; and
- (2) Provide immediate written notification of this noncompliance determination to all persons to whom Westinghouse has distributed units of the basic model; and
- (3) Provide to DOE within 30 calendar days of the date of this letter any and all records, reports, and other documentation pertaining to the acquisition, ordering, storage, shipment, or sale of the basic model.

OPTIONAL ACTIONS BY WESTINGHOUSE

In addition to the mandatory steps listed above that Westinghouse must complete, Westinghouse may avail itself of other options with respect to the model that DOE has determined to be in noncompliance. Specifically, Westinghouse may perform additional testing or make immediate changes to its products to bring them into compliance with the applicable standard.

(1) Additional Testing

Westinghouse may conduct additional testing of the basic model found to be noncompliant.

All units must be tested in accordance with 10 CFR § 430.70(a)(1)-(5), and Westinghouse shall bear the costs of all testing that is conducted.

Until DOE determines that a tested model complies with the applicable standard, that model may not be sold or otherwise distributed by Westinghouse.

If, after this testing, DOE determines that a model complies with the applicable standard, DOE shall issue a notice of allowance to permit Westinghouse to resume the distribution of the affected models.

(2) Modifications to Current Models

Westinghouse may also elect to modify the basic model that has been determined to be noncompliant to bring it into compliance with the applicable standard.

Should Westinghouse opt to do so, the modified basic model shall be treated as a new basic model under the regulations and must be certified in accordance with the provisions of 10 CFR Part 430.

Westinghouse shall also maintain records that demonstrate that the modifications have been made to all units of the new basic model prior to distribution in commerce.

Records addressing these new basic models shall be maintained for a period of time that is consistent with DOE's regulations for product certification -- i.e., for a period of two years from the date that production has ceased. See 10 CFR § 430.62(d).

CONSEQUENCES FOR FAILURE TO COMPLY WITH THIS NOTICE

Should Westinghouse fail to immediately cease the distribution of the above models, this letter serves as notice that DOE will seek a judicial order within 15 calendar days to restrain further distribution of these models. If, however, Westinghouse provides DOE with a satisfactory statement within that 15-day period detailing the steps that Westinghouse will take to ensure that all noncompliant models will no longer be distributed in commerce, DOE may elect to defer seeking such an order until a more appropriate time, if needed.

The distribution of any noncompliant models, including during any manufacturer-initiated testing as described above, may result in DOE seeking all appropriate legal remedies available under Federal law, including injunctive relief and civil penalties with respect to each unit distributed in violation of Federal law.

Dated: 8 October 2010



Timothy G. Lynch
Deputy General Counsel for
Litigation and Enforcement